

THE HONORABLE BARBARA J. ROTHSTEIN

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FEB 19 2004

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE: Phenylpropanolamine (PPA)  
Products Liability Litigation

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This document relates to all actions.

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: No. MDL 1407  
:  
: STIPULATED AMENDED  
: CONFIDENTIALITY ORDER  
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On December 17, 2003, the Court held a conference with representatives of the MDL Plaintiffs' Steering Committee and Defendants Chattem, Inc. ("Chattem"), The Delaco Company, as successor by merger to Thompson Medical Company, Inc. ("Delaco"), and Sidmak Laboratories, Inc. ("Sidmak") (collectively the "Parties"). At that time, the Parties informed the Court that the Plaintiffs' Steering Committee, Chattem and Delaco had entered into a

Memorandum of Understanding (MOU) regarding the potential global settlement of phenylpropanolamine ("PPA") products liability cases involving Dexatrim and other PPA appetite suppressant products distributed by Chattem and Delaco. The parties also informed the Court that Sidmak was considering becoming a signatory on the MOU as well.

Thereafter, on December 19, 2003, the MDL Plaintiffs' Steering Committee, Chattem and Delaco signed and filed the MOU, and obtained an order making the Dexatrim case scoring system and matrix (the "Dexatrim Matrix") confidential.

The parties have agreed upon and executed an Amended Memorandum of Understanding ("Amended MOU") under the terms of which Sidmak has been added as a signatory. The Amended MOU has been filed with the Court and supercedes the Memorandum of Understanding filed with the Court on December 19, 2003.

The Amended MOU contemplates that the Parties will enter into Settlement Agreements under which, in exchange for general releases and discharge of certain claims, qualifying Plaintiffs will receive compensation based on an evaluation of their claims under the Dexatrim Matrix.

**As provisions relating to mechanisms of effectuating the Settlement Agreements, implementation, funding, claims documentation, and administration of the settlement, have not yet been agreed to among the Parties, and are to be the subject of good faith negotiation as described in the Amended MOU, there is a need to keep the Dexatrim Matrix confidential pending further settlement negotiations and until settlement agreements are executed by the Parties, and this Order is vacated.**

**IT IS HEREBY ORDERED:**

1. The contents of the Dexatrim Matrix will be filed under seal and shall not be disclosed except as follows:
  - a. The Dexatrim Matrix may only be used in connection with the settlement of cases alleging injury due to the ingestion of "Dexatrim Products" (as defined in the Amended MOU). In any pending lawsuit against any Defendant Party to the Amended MOU alleging injury due to the ingestion of Dexatrim Products, the Plaintiff, by counsel of record, may obtain a copy of the Dexatrim Matrix from Plaintiffs' Steering Committee provided that Plaintiff, by counsel of record:
    1. signs the Endorsement of Confidentiality Order in the form attached hereto as Exhibit A;
    2. affirms in writing that he/she is in active negotiations with one or more of the Defendant Parties; and
    3. obtains and presents to the Plaintiffs' Steering Committee, the written acknowledgement of such Defendant Party's or Parties' counsel in the form attached hereto as Exhibit B.
  - b. Defendant Parties to the Amended Memorandum of Understanding may disclose the Dexatrim Matrix to their insurers, attorneys, and any other person or entity necessary to obtain funding for the settlement, provided those insurers, attorneys or other persons or entities sign the Endorsement of Confidentiality Order attached at Exhibit C.

1. An insurer of the Defendant Parties that executes the Endorsement of Confidentiality Order attached as Exhibit C and receives a copy of the Dexatrim Matrix may disclose the Dexatrim Matrix to its auditors and reinsurers, if any, to the extent it is obligated to do so by contract, reinsurance contract, or law.
2. Counsel for Alps Pharmaceuticals, Inc., and certain plaintiffs' counsel have received copies of the Dexatrim Matrix pursuant to a confidentiality agreement dated March 2003, that was previously negotiated by the Parties. This Order supersedes any previous confidentiality agreement regarding the Dexatrim Matrix that was entered into by the Parties. Any person or entity who has signed any such confidentiality agreement or who has previously obtained a copy of the Dexatrim Matrix is bound by this Order.
3. If the Dexatrim Matrix is subpoenaed by any court, administrative or legislative body, or any other person or organization purporting to have authority to subpoena such data or information, the party to whom the subpoena is directed, shall not, to the extent permitted by applicable law, provide or otherwise disclose the Dexatrim Matrix without waiting ten (10) business days after first notifying this Court, the Plaintiffs' Steering Committee, counsel for all Defendant Parties to the Amended Memorandum of Understanding in writing of:
  - a. the date on which compliance with the subpoena is requested;
  - b. the location at which compliance with the subpoena is requested;
  - c. the identity of the party serving the subpoena; and

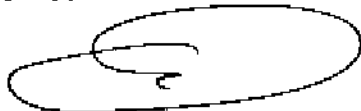
- d. the case name, jurisdiction, and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding, or other proceeding in which the subpoena has been issued;
4. All Parties and counsel of record in this litigation shall comply with the provisions of this Stipulated Amended Confidentiality Order. In the event of a change of counsel, retiring counsel shall fully instruct new counsel of their responsibilities under this Order.
5. The terms of this Stipulated Amended Confidentiality Order shall be in effect until modified or vacated by the Court.

IT IS SO ORDERED.

Dated: February 18, 2004

  
The Honorable Barbara Jacobs Rothstein

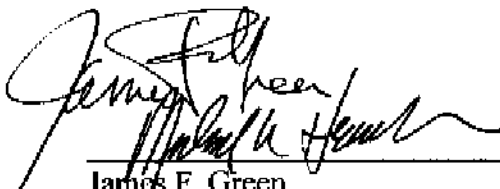
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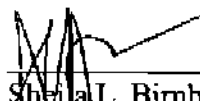
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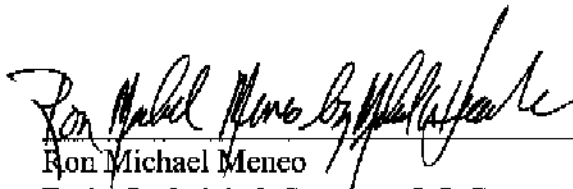
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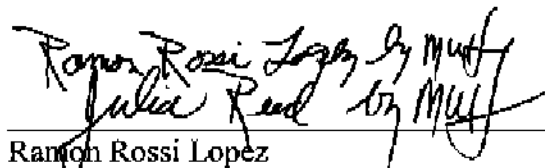
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## **EXHIBIT A**

ENDORSEMENT OF CONFIDENTIALITY ORDER

I hereby attest to my understanding that the Dexatrim Scoring System and Matrix (the "Dexatrim Matrix") provided to me is subject to the Stipulated Amended Confidentiality Order entered \_\_\_\_\_ (the "Confidentiality Order") in In re: Phenylpropanolamine (PPA) Products Liability Litigation, MDL 1407 (W.D. Wa.); that I have been given a copy of and have read the Stipulated Amended Confidentiality Order, and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Confidentiality Order is a prerequisite to my review of the Dexatrim Matrix.

I further attest that I am counsel of record for Plaintiff \_\_\_\_\_ in a pending lawsuit against a Defendant Party to the Amended Memorandum of Understanding that alleges injury due to the ingestion of Dexatrim or another PPA appetite suppressant distributed or manufactured by a Defendant Party to the Amended Memorandum of Understanding. This lawsuit is pending in \_\_\_\_\_, the docket number for the lawsuit is \_\_\_\_\_, and the lawsuit was commenced on \_\_\_\_\_.

I agree that I shall not disclose to others, including co-counsel or referring counsel, the Dexatrim Matrix, in any form whatsoever, and that the Dexatrim Matrix may only be used in connection with the settlement of actions involving parties to the Amended Memorandum of Understanding.



I further agree and attest to my understanding that my obligation to honor the confidentiality of the Dexatrim Matrix will continue until the Court modifies or vacates the Stipulated Amended Confidentiality Order.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Stipulated Amended Confidentiality Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court, Western District of Washington, for the purposes of any proceedings relating to enforcement of the Stipulated Amended Confidentiality Order.

I further agree to be bound by and to comply with the terms of the Stipulated Amended Confidentiality Order as soon as I sign this Endorsement of Confidentiality Order, whether or not the Stipulated Amended Confidentiality Order has yet been entered as an Order of the Court.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Subscribed and sworn to before me this

\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

## **EXHIBIT B**

Exhibit B

Form of Acknowledgement by Defendant Party Counsel

I, \_\_\_\_\_, the undersigned counsel to \_\_\_\_\_, a Defendant Party identified in that certain Stipulated Amended Confidentiality Order dated February 18, 2004, issued by the Honorable Barbara Jacobs Rothstein in *In Re: Phenylpropanolamine (PPA) Products Liability Litigation*, MDL 1407, do hereby affirm and acknowledge that, on behalf of my client, I am in active settlement negotiations with \_\_\_\_\_, counsel of record for \_\_\_\_\_, the plaintiff in a lawsuit alleging injury from the ingestion of a "Dexatrim Product."

I further affirm and consent that a copy of the Dexatrim Case Scoring System and Matrix may be delivered to the above-identified counsel of record for the above-identified Plaintiff and that my client will withhold from any resulting settlement, any pay in accordance with CMOs 6 and 16, the applicable MDL assessment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **EXHIBIT C**

### ENDORSEMENT OF CONFIDENTIALITY ORDER

I hereby attest to my understanding that the Dexatrim Scoring System and Matrix (the "Dexatrim Matrix") provided to me is subject to the Stipulated Amended Confidentiality Order entered \_\_\_\_\_ (the "Confidentiality Order") in In re: Phenylpropanolamine (PPA) Products Liability Litigation, MDL 1407 (W.D. Wa.); that I have been given a copy of and have read the Stipulated Amended Confidentiality Order, and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Confidentiality Order is a prerequisite to my review of the Dexatrim Matrix.

I further attest that I am an insurer, attorney, or \_\_\_\_\_ for \_\_\_\_\_, who is a Defendant Party to the Amended Memorandum of Understanding.

I agree that I shall not disclose to others, except in accord with the Stipulated Amended Confidentiality Order, the Dexatrim Matrix, in any form whatsoever, and that the Dexatrim Matrix and the information contained therein may be used only for the purpose authorized by the Stipulated Amended Confidentiality Order.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Stipulated Amended Confidentiality Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the

jurisdiction of the United States District Court, Western District of Washington, for the purposes of any proceedings relating to enforcement of the Stipulated Amended Confidentiality Order.

I further agree to be bound by and to comply with the terms of the Stipulated Amended Confidentiality Order as soon as I sign this Endorsement of Confidentiality Order, whether or not the Stipulated Amended Confidentiality Order has yet been entered as an Order of the Court.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Subscribed and sworn to before me this

\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public